

REMARKS/ARGUMENTS

Claims 1-20 are pending in the present application. Claims 1 and 12 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Warner et al. (U.S. Patent No. 5,101,141). Claims 2-11 and 13-20 have been objected as being dependent on a rejected base claim and if rewritten in independent form would be considered allowable subject matter. Applicant respectfully traverses all rejections.

Claims 1 and 12 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Warner et al. Anticipation "requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee." Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302, 36 U.S.P.Q.2d 1101, 1103 (Fed. Cir. 1995). "[P]rior knowledge by others requires that all of the elements and limitations of the claimed subject matter must be expressly or inherently described in a single prior art reference." Elan Pharm., Inc. v. Mayo Foundation for Medical Educ. & Research, 304 F.2d 1221, 1227, 64 U.S.P.Q.2d 1292 (Fed. Cir. 2002) (citing In re Robertson, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950 (Fed. Cir. 1999); Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571 7 U.S.P.Q.2d 1057, 1064 (Fed. Cir. 1988)). "The single reference must describe and enable the claimed invention, including all claim limitations, with sufficient clarity and detail to establish that the subject matter already existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention." Id. (citing Crown Operations Int'l, Ltd. v. Solutia Inc., 289 F.3d 1367, 1375, 62 U.S.P.Q.2d 1917, 1921 (Fed. Cir. 2002); In re Spada, 911 F.2d 705, 708 15 U.S.P.Q.2d 1655, 1657 (Fed. Cir. 1990)). See also PPG Indus.,

Inc. v. Guardian Indus. Corp., 75 F.3d 1558, 1566, 37 U.S.P.Q.2d 1618, 1624 (Fed. Cir. 1996) (emphasis added).

Claim 1 in part requires "providing a machine with an operating power mechanism with at least one sensor associated with the power mechanism and being capable of wireless communication with an identification element associated with the apparel of an attendant machine operator." The Warner reference does not provide for a sensor that is capable of wireless communication with an identification element and instead, merely has a sensor that detects an identification element.

The Warner reference is generally directed to versatile remotely signaled controller for lights that provide a remote signal receiver unit for such purposes. (Col. 1, lines 26-30). This lighting system has local control units that are operable at least in response to local occupancy sensing and are provided with a means at least for switching off lights irrespective of occupancy sensing than further preferably with automatic reversion to normal occupancy sensing response after a set of non occupancy being sensed. (Col. 1, lines 46-53). Thus, the Warner invention provides for a lighting element with a sensor that detects when an individual is present. According to the Examiner, the office interprets the occupant's body as an identification element and interprets the lighting system as the machine.

Applicant asserts that the sensor of the Warner patent merely detects occupancy whereas claim 1 requires wireless communication between the sensor and the identification element. According to the application, sensors 30 and 31 have properties that enable them to detect a magnet 32 moving into their sensing field. It should be appreciated that as a function of control modules 35 and 36, magnet 32 will only be detected if it is

moved into the sensing fields so that the operator may not permanently leave their gloves 37 and 38 in front of sensor 30 and 31. (Page 5, lines 7-11). The sensors of the claim must sense movement of the identification element and thus communication occurs. In contrast, the Warner device merely detects occupancy whether movement is present or not. Consequently, the Warner device does not provide a sensor that is capable of wireless communication with an identification element as is required by claim 1. Therefore, each and every limitation of the claimed invention is not present and the anticipation rejection must be withdrawn.

Independent claim 12 additionally has been rejected under 35 U.S.C. § 102(e) as being anticipated by Warner. Independent claim 12 requires "at least one sensor on the frame adapted to sense the presence of an identification element **on** the apparel of a person intending to operate the machine." If as suggested by the Examiner, an occupant's body is the identification element, then this requirement of claim 12 cannot be met. Specifically, the claim requires that the identification element be on the apparel. As defined by the Examiner, if the occupant's body is the identification element, then the identification element is within the apparel and not on the apparel as is required by claim 12. Consequently, each and every limitation of the claimed invention is not present and the anticipation rejection should be withdrawn.

CONCLUSION

If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515/558-0200. All fees or extensions of time believed to be due in connection with this response are attached

hereto; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,



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